

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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THOMAS DOWNS,

Petitioner,

v.

WARDEN HUTCHINGS, *et al.*,

Respondents.

Case No. 2:22-cv-00801-GMN-DJA

ORDER

On May 20, 2022, this court denied petitioner's motion to proceed *in forma pauperis* and directed him to pay the filing fee in order to proceed with his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 3. He has complied with that order and paid the required fee. ECF No. 5. The court has reviewed the petition pursuant to Habeas Rule 4, and the petition shall be filed herein and served upon the respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2244(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

In addition, petitioner has filed a motion for the appointment of counsel. Pursuant to 18 U.S.C. §3006A(a)(2)(B), the district court has discretion to appoint counsel when it determines

1 that the “interests of justice” require representation. There is no constitutional right to appointed  
2 counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551,  
3 555(1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9<sup>th</sup> Cir. 1993). The decision to appoint counsel  
4 is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9<sup>th</sup> Cir. 1986); *Bashor v.*  
5 *Risley*, 730 F.2d 1228, 1234 (9<sup>th</sup> Cir. 1984). However, counsel must be appointed if the  
6 complexities of the case are such that denial of counsel would amount to a denial of due process,  
7 and where the petitioner is a person of such limited education as to be incapable of fairly  
8 presenting his claims. *See Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948  
9 (8<sup>th</sup> Cir. 1970). The petition on file in this action is sufficiently clear in presenting the issues that  
10 petitioner wishes to bring. Also, the issues in this case are not particularly complex. It does not  
11 appear that appointment of counsel is warranted in this instance. Petitioner’s motion for the  
12 appointment of counsel is denied.

13 IT IS THEREFORE ORDERED that the Clerk shall FILE the petition for writ of habeas  
14 corpus (ECF No. 1-1) and motion for appointment of counsel (ECF No. 1-2) as separate docket  
15 entries. The Clerk shall also ELECTRONICALLY SERVE the petition and a copy of this order  
16 on the respondents.

17 IT IS FURTHER ORDERED that the Clerk of the Court is directed to add Aaron Ford,  
18 Attorney General of the State of Nevada, as counsel for Respondents and to provide Respondents  
19 an electronic copy of all items previously filed in this case by regenerating the Notice of  
20 Electronic Filing to the office of the AG only.


21 IT IS FURTHER ORDERED that respondents shall have 60 days from the date of entry  
22 of this order to appear in this action, and to answer or otherwise respond to the petition.

23 IT IS FURTHER ORDERED that if respondents file an answer, petitioner shall have 60  
24 days from the date on which the answer is served on him to file and serve a reply. If respondents  
25 file a motion to dismiss, petitioner shall have 60 days from the date on which the motion is  
26 served on him to file and serve a response to the motion to dismiss, and respondents shall,  
27 thereafter, have 30 days to file a reply in support of the motion.  
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1 IT IS FURTHER ORDERED that any additional state court record exhibits filed herein  
2 by either petitioner or respondents shall be filed with a separate index of exhibits identifying the  
3 exhibits by number. The CM/ECF attachments that are filed further shall be identified by the  
4 number or numbers of the exhibits in the attachment. The hard copy of any additional state court  
5 record exhibits shall be forwarded – for this case – to the staff attorneys in **Reno**.

6 IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel is  
7 DENIED.

8 DATED: July 7, 2022

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11 U.S. District Judge Gloria M. Navarro  
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